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Supreme Court of the United States

OCTOBER TERM, 1950

No. 671

CHARLES SESLAR,

Petitioner,

vs.

UNION LOCAL 901, INC., DALLAS SMITH, RUSSELL L. JOHNSON, RICHARD HURST, MELVIN BORCHERDINGER, PAULUS ADAMS, CECIL ONION, VIRGIL FOLAND, JOSEPH EDWIN KRAMER, JOHN B. DENNIS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Charles Seslar respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit (R. 399) reversing and vacating a judgment of contempt issued by the District Court for the Northern District of Indiana, Fort Wayne Division on the ground that the District Court was without jurisdiction to issue the original injunction.

Opinions Below

The opinion of the Court of Appeals (R. 399) is reported in 186 F. 2nd 403 (C. A. 7). The opinion and order of the

District Court granting the injunction against the defendants (R. 12-18) is reported in 87 F. Supp. 44 (D. C. N. D. Ind.). The decision of the District Court adjudging the defendants in contempt is not reported.

Jurisdiction

The judgment of the Court of Appeals was rendered on January 11, 1951. The jurisdiction of this Court is invoked under Title 28, Section 1254 of the Judicial Code.

Preliminary Statement

Complaint

The plaintiff-petitioner, member of Local 901, United Electrical Radio & Machine Workers of America, instituted an action in equity on October 6, 1949 against the defendants (R. 1), invoking jurisdiction of the District Court under Title 28, Section 1332(1) (revised), charging that the defendants had improperly divested a local trade union of its funds and transferred it to a third party in violation of the constitutions and by-laws of the local union and of the international union of which it was a part. The defendants turned over the assets of the local union to an Indiana corporation organized solely for that purpose. The value of the assets which the plaintiff sought to protect was approximately $114,000. The complaint charged that as a result of this illegal transfer the plaintiff, as a member of the local union, and the local union itself, had been improperly deprived of these assets. The complaint charged that the defendants intended to utilize the defendant corporation for the purpose of turning over the aforesaid assets to a recently organized rival union. Having no remedy at law, the plaintiff requested that the defendants be restrained from disposing of the assets and from continuing to exercise control and custody over the property and assets of the local union, and that the defendants

be ordered to reconvey to the said Local 901, United Electrical Radio & Machine Workers of America, all property transferred to the corporation from the local union, and that a temporary restraining order be entered forthwith. The plaintiff being a citizen of Ohio and the defendants citizens of Indiana, there was proper diversity of citizenship. An allegation in the complaint set forth the requisite jurisdictional amount.

Proceedings Below

The defendants moved to dismiss the complaint (R. 7) on the grounds that the Court did not have jurisdiction in that there was not the requisite jurisdictional amount and that the plaintiff had not exhausted his remedies within the union. The defendants answered to the complaint (R. 9). After presentation of the evidence in the cause, on November 9, 1949, the Court entered its judgment against the defendants and extended to the plaintiff in the cause certain permanent injunctive relief (R. 12-18). The Court found that jurisdiction of the cause was vested by Title 28 U. S. C. A., Section 1332; that there was diversity of citizenship, and that the amount in controversy was in excess of $3,000. The defendants were ordered to reconvey to the local union all assets of which it had been divested and to deliver said assets to the local union by a specified date. The defendants were permanently enjoined from transferring, assigning, conveying or in any other manner disposing of any of the funds, property or assets of the local union.

On November 9, 1949, the defendants filed a notice of appeal from the original injunction to the Circuit Court of Appeals but failed to perfect said appeal within the requisite time.

On January 20, 1950, the plaintiff instituted contempt proceedings by filing a "Complaint for Relief of Acts in Contempt" of the Court order of November 9, 1949 (R. 24-29). The plaintiff alleged that the defendants caused

funds of the local union to be disbursed and caused the facilities and properties of the local union to be used in violation of the injunction order, that said funds and properties were used for the benefit of a rival union organization. Plaintiff requested that the moneys be reimbursed.

The defendants then filed their motion to strike the complaint for contempt (R. 31-32) on the grounds that the plaintiff was attempting to expand the order, that a similar action was now pending though undecided in the State Court, that the plaintiff had no right in the assets of the local union, and that the plaintiff was causing multiplicity of suits by preventing the final and sole disposition of the suit in the State Court. No question of jurisdictional amount was raised in that motion. The motion was overruled by the Court (R. 72).

Thereafter, a hearing was held on the citation for contempt. The District Court found that the defendants had violated the restraining order and directed reimbursement as to certain of the alleged violations (R. 351-362).

On January 30, 1950, the defendants moved to dismiss the contempt proceedings for want of jurisdiction on the part of District Court because of the Norris-LaGuardia Act, and for failure to join indispensable parties (R. 73). Said motion was overruled by the Court (R. 81). In a memorandum of decision and by a decree entered March 20th, 1950, the Court entered its judgment finding the defendants guilty of civil contempt and fixed terms of purgation. On March 24, 1950, the defendants filed a motion to vacate the judgment of contempt on the grounds that the State Court had jurisdiction over the subject-matter, that the union, Local 901, UERMWA, not a party to the proceedings, had been granted relief, and that the original order on its merits should not have issued. The motion to vacate was not grounded on the lack of jurisdictional amount as required by Title 28, Section 1332. Said motion was denied on March 28, 1950 (R. 375).

The defendants filed a motion for suspending and staying enforcement of the order (R. 376) pending appeal, which motion was granted in part on the condition of the defendants filing a bond of the necessary amount (R. 378). The defendants filed an appeal to the Court of Appeals, Seventh Circuit on March 29, 1950 (R. 379). The Court of Appeals reversed the judgment of contempt and remanded the cause to the District Court (R. 405). In the decision of the Court of Appeals on January 11, 1951 (R. 399-404), it was held that the District Court did not have jurisdiction to grant the original injunction in that the amount in controversy was less than the requisite jurisdictional amount. The Court held that plaintiff's interest in the assets of the local union was several and not joint and his individual claim was less than $3,000.

Statutes Involved

Title 28, Section 1332:

"Diversity of citizenship, amount in controversy.

a) The District Courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $3,000 exclusive of interests and costs and is between:

(1) citizens of different states;"

Title 18, Section 401:

"*Section 401, power of court*

A Court of the United States shall have power to punish by fine or imprisonment at its discretion such contempt of its authority and none other as—

(3) disobedience or resistance of its lawful writ, process, order, rule, decree or command."

Questions Involved

1. Whether, in an injunction action by a union member to safeguard the fund and assets of his trade union, jurisdictional amount for the purpose of diversity jurisdiction is determined by the value of the union's assets?

(a) Whether a member's interest in the assets of a trade union is his right to the use and enjoyment of the total assets and the benefits derived therefrom rather than solely an interest in a per capita divided share of the total assets?

(b) Whether the assets of a union represents a joint nondivisible fund available to all the members, or whether the assets of a union represent merely an aggregation of separate several and divisible interests of each member?

(c) Whether a constitution of a union providing for no distribution of its assets among its members upon a dissolution or otherwise, vests each member with an interest in the entirety of the association's assets?

2. Whether the criterion in determining jurisdictional amount is *either* the defendants' or the plaintiff's interest in the object of controversy?

3. Whether the test of jurisdictional amount in an injunction proceeding is determined by the value of the injunction itself?

4. Whether in a proceeding determining title to real property, it is the value of the property, rather than a party's interest which determines the value of the matter under Title 28, Section 1332.

5. Whether the object of the controversy in this injunction proceeding satisfied Title 28, Section 1332 as to jurisdictional amount?

6. Whether the lack of jurisdiction of the District Court in issuing the original injunction is a proper defense to a violation of the injunction order in a contempt proceeding?

Summary Statement of the Matter Involved

Whether the District Court had jurisdiction over this cause in respect to the requisite jurisdictional amount raises the important and fundamental question as to the relationship of the union and its members insofar as it applies to the ownership and use of the association's assets.

The question posed in determining the plaintiff's interest in protecting the assets of his union is whether a member has a right to the enjoyments derivative from the total use of the funds of a trade union or is his right merely a segmented severable interest in a particular share of the organization's funds. In determining this issue the Court is confronted with the fundamental nature of a union and its properties. For that reason the nature of the relationships of the plaintiff and his union, Local 901, United Electrical, Radio & Machine Workers of America as set forth in the Constitution of the union are of vital importance in consideration of this matter.

Plaintiff-petitioner, a citizen of Ohio, is a member of a trade union, Local 901, United Electrical, Radio & Machine Workers of America (UE) (R. 16). This Union at the time of the institution of the suit was the certified collective bargaining agent of all production and maintenance employees at the Fort Wayne plant of the General Electric Company (R. 14). The local union came into being as a part of the United Electrical, Radio & Machine Workers of America (UE) as a result of the issuance of a charter from the national body to the local organization (R. 15). The constitution of the international Union of the United Electrical, Radio & Machine Workers of America (UE) provides for the issuance of charters to local unions. The activities of the local union must be in accordance with the constitution and by-laws of the parent organization (R. 3, par. 9; R. 4, par. 13). The constitution of the parent organization provides that a local union may not secede or disaffiliate from the parent body and that the local union shall continue in

existence as long as there are seven or more members (R. 4, par. 13). If a local union is reduced in size to less than seven members, all the assets, properties and funds of the aforesaid local revert to the parent body and the remaining individuals become members at large of the parent union (R. 4, par. 13). The constitutions do not permit a prorated, per capita distribution of the assets of the local union under any conditions, including dissolution (R. 4, par. 13).

The District Court in issuing its injunction (R. 12-18) found:

"Conclusions of Facts

"12. The real and personal property of a local union were at the disposal of the local, to be used for the purpose of serving the interests and needs of its members, in accordance with the constitution and by-laws of both the national and local unions. When all property of the local union was transferred to the defendant corporation the availability of this property for disposal according to the terms of the constitution and by-laws was curtailed and impeded.

"13. The plaintiff, as a member of the union, was adversely affected by the transfer of funds to the defendant corporation. He has no adequate remedy at law to protect his interest and he will suffer substantial and irreparable damage if such transfer is not set aside, and if he is not protected against similar transfers or diversions in the future."

The Court also found:

"Conclusions of Law.

"2. The constitution of the parent organization, the UE, is a contract between it and its members and Local Union 901. The constitutions of the local and national organizations are so integrated as to form mutual contractual obligations between these organizations and the membership of the local union.

"A transfer of the funds and property of the local union which is unconsistent with these constitutions is ultra vires and void.

> *"Each member of the local union has an interest in the entire assets and property of the local union.* In addition, each member has a contractual right to have the assets and property of the local union used only for those purposes set forth in the constitutions, and disbursed only in such manner as is therein approved. Supplementary to those is the further right to have the assets and property of the local union remain under the control of both the local and national unions as such control is set forth and delineated in the constitutions and by-laws. Since the transfer to the corporation interfered with this control and is inconsistent therewith, such transfer is void, and should be set aside." (Emphasis supplied.)

The major part of the assets of the local union, $70,000, was real estate, the Union Hall, the title to which was involved in the cause of action (R. 3). The defendants had executed a deed conveying the real property of Local 901, United Electrical, Radio & Machine Workers of America (UE), to the defendant corporation.

In the contempt proceedings held in the District Court, no issue as to the jurisdictional amount was raised by the defendants. The Court of Appeals in rendering its opinion accepted the contention of the defendants, first raised in their brief on appeal, that the plaintiff had a separate distinct interest in the funds of the union to be determined on a per capita basis, i.e., $23.00. The Court below denied that the individual member had a right to the use, enjoyment and benefits derived therefrom of the assets in its entirety. The union's treasury was held to be in essence an accumulation of individual interest rather than property of the association itself. The application of such a principle in this fashion to a labor organization raises a question vital to the more than 15 million union members of the nation.

The Court below further held the contempt judgment must fall upon the finding that the District Court did not have jurisdiction to issue the original injunction.

Reasons for Granting the Writ

I

There are presented here for decision a number of important questions which have not been, but should be, settled by this Court. These questions have been decided in a way probably in conflict with the applicable decisions of this Court and in conflict with decisions of other courts of appeals in the same manner.

II

The decision of the Court of Appeals in the present proceeding raises a fundamental and vital question as to the nature of unincorporated associations, particularly trade unions, by holding that the interest of the individual member is severable rather than joint.

The tremendous role of trade unions today in the national life of the country is of such import as to warrant a clear and definitive determination as to the nature of such organizations. The circumstances in connection with the present proceeding demonstrate the vital importance of a clear definition of property interests of trade unions and their membership.

The nature of a trade union and its properties was clearly discussed by this Court in *United States* v. *White*, 322 U. S. 695:

> "But individuals when acting as representatives of a collective group cannot be said to be exercising their personal rights and duties nor to be entitled to their purely personal privileges. Rather they assume the rights, duties and privileges of the artificial entity or association of which they are agents or officers and they are bound by its obligations * * *" (p. 699).
>
> "This conclusion is not reached by any mechanical comparison of unions with corporations or with other entities nor by any determination of whether unions

technically may be regarded as legal personalities for any or all purposes. *The test rather is whether one can fairly say under all the circumstances that a particular type of organization has a character so impersonal in the scope of its membership and activities that it cannot be said to embody or represent the purely private or personal interests of its constituents, but rather to embody the common or group interests only* * * * *labor unions—national or local, incorporated or unincorporated—clearly meet that test.*

"*Structurally and functionally a labor union is an institution which involves more than the private or personal interests of its members.* It represents organized institutional activity as contrasted with individual activity * * * the union's existence in fact and for some purposes in law is as perpetual as that of any corporation in being dependent upon the life of any member. It normally operates under its own constitution, rules and by-laws which, in controversies between member and union are often enforced by the courts. The union engages in a multitude of business and other official concerted activities, none of which can be said to be the private undertakings of the members * * * *the union owns separate real and personal property even though the title may nominally be in the names of its members or trustees. The official union books and records are distinct from the personal books and records of the individuals, in the same manner as the union treasury exists apart from the private and personal funds of the members.* See *U. S.* v. *Goedde & Co.*, 4 F. Supp. 523, 534" (pp. 701, 702). (Emphasis supplied.)

The opinion of the Court below is thus in complete conflict with the rationale expressed by this Court in *United States* v. *White, supra.* The statements of Mr. Justice Murphy are basically determinative of the issue as to this petitioner's interest in the assets of his local trade union. At no time according to the terms of the constitution and by-laws of the union could this petitioner or any other individual union member carve out an individual interest from the union's assets. The interest of this plaintiff in the assets representing approximately $114,000 is in the total rights, privileges, protection and enjoyment of bene-

fits derivative from the assets. Today a union facing powerful combinations of corporate wealth requires considerable sums of money to fulfill its purposes—the obtaining of better wages and working conditions in behalf of its members.

This petitioner does not want and has no interest in a severable or per capita share of the Union funds. He wants the rights derivative from the proper use of such a fund as an entity. At the time of the institution of the action, the petitioner as a member of the local union was confronted with an election under the National Labor-Management Relations Act; the union was entering into negotiations with the General Electric Company on the matter of wages and working conditions; and this member sought in behalf of himself and the union to protect the integrity of these funds so that his labor organization could service his needs in those respects.

A worker in joining a labor organization and assuming the financial obligations connected therewith, does so for certain clearly defined objectives. He realizes only through the collective strength of organized labor can he achieve conditions of labor satisfactory to him. His own individual bargaining powers in the face of organized industrial strength is meaningless. Concomitant with the creation of organized strength, the worker has need of the use of the financial holdings of the union only on a collective or joint basis. The worker has no interest in his "per capita" share of these assets. It is as meaningless as his individual bargaining power. To mechanically apply a concept of private law to trade unions is to deny the right, powers and position of unions in society today, and it would result in the atomization of the union's status.

The nature of the proceeding was such as to save the assets of the local union for the local union and all its membership. That was the ultimate objective sought. In essence it was an action to establish the rights of all the members of Local 901, United Electrical, Radio & Machine Workers of America, in the union's assets. This petitioner could sue alone, as he, like every other member of the or-

ganization, has the right to enjoy the total benefits of the entire assets or subject matter in controversy.

Furthermore, a member of a trade union organization has the right to enforce the contractual relationships established by the union's constitution, by-laws and membership cards which set forth the manner in which the organization shall function and its funds be used. And his right to prevent *ultra vires* acts of officers and members as to their dealings with the entire assets of the organization is maintainable in a Court. See *Green* v. *Obergfell,* 121 F. 2nd 46 (C. A., D. C.); *Bacon* v. *Paradise,* 63 N. E. 2d 571 (Mass.); *Fitzgerald* v. *Abramson,* 89 F. Supp. 504 (D. C., S. D. N. Y.). Compare *Rosenberg* v. *Chicago Title & Trust Co.,* 128 F. 2nd 245 (C. A. 7).

The payment of the individual members' dues becomes merged into the union's funds. The individual member does not have an identifiable segmented share of those funds. As is set forth in the union constitution which was made part of the complaint in the action herein, the individual member shall never individually succeed to those funds.

That such a relationship established through by-laws of unincorporated associations is enforceable in the courts is not a novel doctrine. As early as 1852, in the case of *Goesel, et al.* v. *Bimeler, et al.,* 55 U. S. 589, that issue was passed upon by the Supreme Court. An heir of an original member of a communal association sued the association for a partition of its land so that she might obtain that segment contributed to it by her father. The Court held that the heir was not entitled to a partition of the land. Upon submitting to the terms of the association the individual members and their heirs were bound by that contractual relationship and the property became a part of the entity's possessions rather than an aggregate of individual interests.

In *Low* v. *Harris,* 90 F. 2nd 783 (C. A. 7), involving a controversy arising out of a secession of a local from the United Mine Workers of America, the constitution pro-

vided that no local union shall divide its funds among the members. The Court of Appeals for the 7th Circuit in confirming the validity of such a contractual relationship and giving full force and effect to it, stated as follows:

> "In Unincorporated Associations and Business Trusts by Wrightington it is said (p. 351)
>
> > 'in accordance with this view, it has been held that title is in the association; that when a group of members secede from the association, even though they are a majority, they lose all interest in its property; that members have no right to sue for a dissolution and a distribution of its assets * * *' "

The Court then referred to *American Jurisprudence*, Vol. 4:

> " 'Funds of a Free Mason Lodge * * * cannot on the dissolution of the Lodge by a vote of the acting members be divided among themselves for their private use.' "

An action instituted by a member of a local union to protect the assets of that organization brings into issue that member's right to enjoy the assets in toto and if the assets to be protected met the requirements as to jurisdictional amount, the Federal Courts have power to proceed in the matter, in the presence of diversity of citizenship.

The Courts of the State of Indiana have likewise given recognition to these same principles of law. *Koerner Lodge* #6, *K. of P.* v. *Grand Lodge, K. of P. of Indiana*, 146 Ind. App. 639, 45 N. E. 1103 [See also *Harris* v. *Backman*, 85 Pac. 2nd 457; *Bacon* v. *Paradise*, 63 N. E. 2nd 571 (Mass.)]

III

As well as failing to analyze the plaintiff's interest in terms of his status as a member of a trade union, the Court of Appeals improperly applied the principles normally determinative of jurisdictional amount in equity proceedings.

This Court has held that in an injunction proceeding the value of the business, object organization or funds involved determines jurisdictional amount. *Hunt* v. *N. Y. Stock Exchange,* 205 U. S. 322; *Bitterman* v. *Louisville & Nashville R. R.,* 207 U. S. 205, 225.

In the present case the plaintiff and the local union of which he is a member would be deprived in toto of the very object sought to be protected. It is the value of the right being protected from invasion that remains the ultimate criterion. *Hunt* v. *N. Y. Cotton Exchange, supra; Packard* v. *Banton,* 264 U. S. 140, 142; *Board of Trade of City of Chicago* v. *Cella Commission Co.,* 145 F. 28, 205 U. S. 336. The individual's potentially recoverable interest in an action at law is not germane in an injunction proceeding seeking to protect the invasion of a right in a matter or object which otherwise would be destroyed. *King* v. *Kansas City Police Relief Assn.,* 60 Fed. 2nd 547 (D. C., W. D. Mo.).

In *Bureau of National Literature* v. *Sells,* 211 F. 379 (D. C., W. D. Wash.), involving infringement of a copyright, a similar issue as to jurisdictional amount was involved. The Court of Appeals held:

> "Both parties seem to agree that where an injunction is prayed for, the amount in controversy is the value of the injunction and this undoubtedly is the correct rule. 16 Am. & Eng. Enc. of Law, 351; *Hagge* v. *Kansas City S. Ry.* (*C. C.*), 104 Fed. 391" (p. 383). (Emphasis supplied.)

It is the petitioner's contention that the Court in the case above cited stated the essence of the rule—the amount of money or value affected as a result of the injunction between the parties. The defendant in the instant case was enjoined from the use of approximately $114,000 in assets. The plaintiff sought to enjoy the benefits derivative from such a fund and will do so upon the upholding of the injunction in issue.

IV

The test of the jurisdictional amount in an injunction proceeding is measured by its value to *either party*. The opinion of the Court below was in conflict with the decision of the Supreme Court, Court of Appeals of the various circuits in limiting the test solely to the plaintiff's interest.

The Court below cited *Glenwood Light Co.* v. *Mutual Light Co.*, 239 U. S. 121, in support of its position. Such citation negates the principle of the *Glenwood* case, *supra*, that it is the object itself which determines jurisdictional amount. It is either party's interest, plaintiff or defendant, that may be taken into consideration in this respect.

In *Smith* v. *Adams*, 130 U. S. 175, the Court stated:

> "Thus a suit to quiet title to parcels of real property or to remove a cloud therefrom, by which their use and enjoyment by the owner are impaired is brought within the cognizance of the Court under the Statute only by the value of the property affected."

In *Elliott* v. *Empire Natural Gas Co.*, 4 F. 2nd 493 (C. A. 8), the Court of Appeals for the Eighth Circuit commented on this very issue, to wit:

> "We think 'the value of the matter in controversy' as the term is used in Section 24 of the Judicial Code means the pecuniary result to *either party* which the judgment entered in the case would directly produce either at once or in the future" (p. 497). (Emphasis supplied.)

Likewise in *Ross* v. *So. Ry. Co.*, 20 F. Supp. 556 (D. C., W. D. S. C.), the Court stated:

> "In such a case it is not the claim of the plaintiff but the value of the property of which *the defendant* may be deprived by the decree sought which is the test of the jurisdictional amount. *Miss. & M. R. Co.* v. *Ward*, 2 Black 485; *Rainey* v. *Herbert, et al.*, 55

Fed. 443 (C. A. 3); *Washington Market Co.* v. *Hoffman,* 101 U. S. 112; *Mayor etc. of Baltimore* v. *Postal Tel. Co.,* 62 Fed. 500 (Cir. Ct. D. Md.). By this test the record establishes the value of the matter in controversy to be well within the federal jurisdictional amount" (p. 557).*

Similarly, in *Ronzio et al.* v. *Denver & R. G. W. R. Co.,* 116 F. 2nd 604, at page 606 (C. A. 10), the Court of Appeals of the Tenth Circuit stated:

> "In determining the amount in controversy we may look to the object sought to be accomplished by plaintiff's complaint; the test for determining the amount in controversy is the pecuniary result to *either party* which the judgment would directly produce."

The reason for such a doctrine as above quoted is found in the fact that a court of equity in an injunction proceeding does not close its eyes to the whole nature of the controversy in determining whether or not it has jurisdiction; the Court looks to the real nature of the controversy between the parties not in part but in its full aspects. (See *Stimson* v. *Dousman,* 20 How. 461; *Shappiro* v. *Goldberg,* 192 U. S. 232.)

V

Where the title to real estate is in issue the criterion for jurisdictional amount is the value of the property, rather than any parties' interest therein.

In *Peterson* v. *Scuro,* 93 F. 2nd 878 (C. A. 4), the title to land was brought in issue through an action in ejectment. The question of jurisdictional amount arose particularly on the issue as to whether or not a mortgage on the land might be offset so as to reduce its value and

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* See also *Shipe* v. *Floral Hills, Inc.,* 86 F. Supp. 985 (D. C., W. D. Mo.); *N. J. Federation of Young Men's & Young Women's Hebrew Assns.* v. *Hoffman,* 25 F. Supp. 687 (D. C., M. D. Pa.); *National Lock Co.* v. *Chicago Regional Labor Board,* 8 F. Supp. 820 (D. C., M. D. Ill.).

therefore remove the cause from federal jurisdiction. The Court held that where real property is involved, it is not defendant's or plaintiff's interest alone which governs, but rather the value of the entire property.* See also *Smith* v. *Adams, supra.*

Of the $114,000 involved in the present action $70,000 is represented by the real estate of the local union. In determining the ultimate issues in this case the Court of necessity must determine title to the real estate, and this property alone is sufficient to vest jurisdiction in the federal court.

V I

The Court in holding that the amount in controversy was not sufficient to invoke Federal jurisdiction cited *Glenwood Light Co.* v. *Mutual Light Co., supra, and Thomson* v. *Gaskill, et al.,* 315 U. S. 442. Examination of these cases reveals that they are not appropriate to the issues involved *herein.*

The Court below in citing *Glenwood Light Co.* v. *Mutual Light Co., supra,* unduly narrowed the holding in that case so as to in effect negate its very purpose. In that case the sole issue was whether or not the object of controversy was correctly defined, whether the criterion was the damage caused by the acts of the defendant or the value of the object which the plaintiff sought to protect. The Court held that it was the object sought to be protected, the basis of the litigation, which determined whether or not there was jurisdictional amount rather than any possible future speculative damage.

While the Court below particularly refers to one sentence stating the test is the plaintiff's interest, the following sentence clearly indicates the Court did not have in mind a desire to limit the holding so that the issue was

* Hughes Federal Practice, Vol. 1, p. 325; *Woodside* v. *Ciccroni,* 93 F. 1 (C. A. 9); *Conn. General Life Insurance Co.* v. *Weldon,* 246 F. 265 (D. C., M. D. Ala.).

the value of the claim to the plaintiff *alone*. The Court went on to assert the well-settled doctrine that the object of the controversy itself was the criterion stating:

> "In *Mississippi and Missouri R. R. Co.* v. *Ward*, 2 Black 485, 492, it was said 'The want of a sufficient amount of damage having been sustained to give the federal courts jurisdiction will not defeat the remedy, as the removal of the obstruction is the matter of controversy and the value of the object must govern'."

Nowhere in issue in that proceeding was the particular plaintiff's interest in the object sought to be protected.

Thomson v. *Gaskill et al., supra,* likewise relied on by the Court of Appeals cites a principle with which there can be little controversy, that it is not the amount immediately recoverable at law that determines the jurisdictional question, but rather the ultimate and more basic result. The Court there found that there was no jurisdiction because the individual plaintiffs, who had *aggregated* their claims in an attempt to reach the required sum, individually did not have claims amounting to that required to establish federal jurisdiction. That case is not at all analogous to the present in that each of the individuals had a separate identifiable claim which ultimately would be reduced to a payment of money to each of the individuals severally. While they all had an interest in the fund which was ultimately to pay them their pension benefits, the interest was a severable one and the point in issue was not the enjoyment of the benefits of one entity that would remain as such, but rather income which would become payable ultimately to each of the plaintiffs.

As we have discussed previously, *supra*, at pages 10-14, this plaintiff does not have an interest in a particular share or a percentage share in the local union's assets. He may solely enjoy the benefits and protection of the union's assets as a particular entity, and he has no individual derivative claim therefrom which at any time shall be reduced to a sum of money. The plaintiff in instituting this

action did so for the purpose of protecting all of the assets so that the union itself and its organization and membership might continue. By so doing he protects his right to enjoy the benefits derived from the existence of such a fund.

Similarly, the reliance of the lower Court on *Pinel* v. *Pinel,* 240 U. S. 594; *Gibbs* v. *Buck,* 307 U. S. 66; and *Troy Bank* v. *Whitehead & Co.,* 222 U. S. 39, is inapplicable since these cases like the *Thomson* case, deal solely with the problem of aggregation of individual severable claims.

It is significant that the Court in *Gibbs* v. *Buck, supra,* held that the mode of determination of the amount involved in an equity proceeding is for the trial court. In the proceedings herein, in the original findings of fact and law in issuing the original injunction, the trial court found that the plaintiff had an indivisible interest in the entirety of the assets of the organization.

VII

The defendants were in contempt of Court whether or not the District Court had jurisdiction to issue the permanent injunction. The Court below erred in reversing the judgment of contempt.

The defendants, after filing a notice of appeal from the original permanent injunction order of the District Court failed to perfect this appeal within the requisite time. There was no matter on appeal before the Court of Appeals at the time the contempt was committed. Defendants in their motion to dismiss the contempt citation and the judgment of contempt failed to raise the question as to jurisdictional amount. The sole question as to jurisdiction was whether or not the Court had the power to issue an injunction under the terms of the Norris-LaGuardia Act. The lack of jurisdictional amount was not asserted by the defendants at any time until their briefs before the Court of Appeals.

Having failed to appeal from the permanent injunction are the defendants free to violate an order of the Court?

The holding of the lower Court is in conflict with *United States* v. *United Mine Workers of America*, 330 U. S. 258.

That the original injunction order may not be contested in the contempt proceedings was affirmed recently in *Maggio* v. *Zeitz*, 333 U. S. 56. This Court held that the subject matter in issue in a contempt proceeding is solely whether or not the accused has committed the acts complained of and in so doing violated a mandate of the court. See, also, *Howat* v. *State of Kansas*, 258 U. S. 181; *Fletcher* v. *United States*, 174 F. 2nd 373 (C. A. 4); *Woods* v. *Fliss, et al.*, 168 F. 2nd 612 (C. A. 7); *United States ex rel. Bowles* v. *Seidman*, 154 F. 2nd 228 (C. A. 7).

CONCLUSION

The petitioner prays that a writ of certiorari issue to the United States Court of Appeals for the Seventh Circuit to review its judgment.

Respectfully submitted,

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